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SENATE BILL 789

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO PRIVATE PROPERTY RIGHTS; ELIMINATING DEPARTMENT OF  
GAME AND FISH REQUIREMENTS PERTAINING TO GAME PARKS AND  
ENCLOSURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 17-4-8 NMSA 1978 (being Laws 1912,  
Chapter 85, Section 59, as amended) is amended to read:

"17-4-8. GAME AND FISH--PROPAGATING IN PRIVATE [~~LAKE~~]  
LAKES OR [~~PARK~~] BODIES OF WATER-- SALE-- LICENSE. -- [~~SEC. 59. No~~]  
A person shall not have or maintain [~~any park, enclosure~~] a  
lake or body of water for the purpose of keeping or propagating  
therein any [~~game or~~] game fish for sale, [~~nor shall any~~] and  
living [~~game or~~] game fish from [~~such park, enclosure~~] the lake  
or body of water shall not be sold or offered for sale, unless  
the owner, proprietor or lessee [~~thereof shall first procure~~]

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1 procures a license as [~~hereinafter~~] provided in Sections 17-4-9  
2 through 17-4-28 NMSA 1978. "

3 Section 2. Section 17-4-9 NMSA 1978 (being Laws 1912,  
4 Chapter 85, Section 60, as amended) is amended to read:

5 "17-4-9. [~~GAME--FISH~~] PUBLIC NUISANCE--MAINTAINING  
6 PRIVATE [~~PARK OR LAKE BY PERSON~~] LAKES OR BODIES OF WATER  
7 WITHOUT [~~PERMIT~~] PERMITS. -- [~~SEC. 60.~~] Any [~~park, enclosure~~]  
8 lake or body of water maintained in violation of [~~this~~] Chapter  
9 17 NMSA 1978 shall be deemed a continuing public nuisance and  
10 may be abated as provided by law for the abatement of public  
11 nuisances and the [~~game or~~] game fish therein liberated or any  
12 obstruction to the free ingress or egress of fish removed, and  
13 each day the [~~same~~] lake or body of water is maintained in  
14 violation [~~hereof~~] of that chapter shall be a separate  
15 offense. "

16 Section 3. Section 17-4-10 NMSA 1978 (being Laws 1912,  
17 Chapter 85, Section 61, as amended) is amended to read:

18 "17-4-10. GAME FISH IN [~~PRIVATE PARK OR LAKE~~] LAKES OR  
19 BODIES OF WATER--TRANSPORTATION, SALE. -- [~~SEC. 61. No persons~~]  
20 A person shall not transport or sell, keep or expose or offer  
21 for transportation or sale any [~~game or~~] game fish taken from  
22 any [~~park, enclosure~~] lake or body of water, public or private,  
23 unless the [~~same be~~] lake or body of water is licensed as  
24 provided in [~~this chapter, and then only as provided in this~~  
25 division, and] Sections 17-4-8 through 17-4-28 NMSA 1978. This

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1 section shall apply to game ~~[and]~~ fish held by private  
2 ownership as well as to game ~~[and]~~ fish the ownership of which  
3 may be acquired under ~~[this chapter]~~ those sections. "

4 Section 4. Section 17-4-11 NMSA 1978 (being Laws 1912,  
5 Chapter 85, Section 62, as amended) is amended to read:

6 "17-4-11. ~~[GAME--FISH--IN]~~ PRIVATE ~~[PARKS--OR]~~ LAKES AND  
7 BODIES OF WATER USED FOR IRRIGATION-- ~~[ACT]~~ WHEN LAW APPLIES. --  
8 ~~[SEC.--62.]~~ The provisions of ~~[this]~~ Chapter 17, Article 4 NMSA  
9 1978 in relation to the licensing of private ~~[parks--and]~~ lakes  
10 ~~[the licensing thereof]~~ and other bodies of water for the  
11 keeping and propagation of ~~[game--and]~~ game fish ~~[therein--and~~  
12 ~~permitting the same thereof]~~ shall apply to every ~~[park--or]~~  
13 lake ~~[or such part thereof as is on land held by private~~  
14 ~~ownership and to every lake]~~ or body of water, the water of  
15 which or the right to use of such water, in whole or in part,  
16 has been or may hereafter be acquired under the laws of this  
17 state or of the United States for irrigation purposes ~~[and]~~.  
18 The owner of ~~[such land--or]~~ the water right shall be deemed the  
19 proprietor of ~~[such park--or]~~ the lake or body of water and of  
20 the game ~~[or]~~ fish ~~[therein]~~ in the lake or body of water to  
21 the extent of his ownership of ~~[such land--or]~~ the water right. "

22 Section 5. Section 17-4-12 NMSA 1978 (being Laws 1912,  
23 Chapter 85, Section 63, as amended) is amended to read:

24 "17-4-12. LICENSE--APPLICATION--CONTENTS--LIMITS. -- ~~[Any]~~  
25 A person having already established or desiring to establish or

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1 maintain a [~~park or~~] lake or body of water for the purpose of  
2 keeping or propagating and selling the [~~game or~~] game fish  
3 [~~therein or to be placed therein~~] in or to be placed in the  
4 lake or body of water shall apply in writing to the [~~Warden~~]  
5 director of the department of game and fish, stating the name,  
6 location, extent and proprietorship of the [~~same~~] lake or body  
7 of water and the kind and, as near as may be, the number of  
8 [~~game or~~] game fish kept or desired to be kept [~~therein~~] in the  
9 lake or body of water and the term for which the license is  
10 desired and [~~inclosing~~] enclosing the fee [~~therefor, and~~] for  
11 the license. If upon examination by the [~~Warden~~] director it  
12 [~~shall appear~~] appears that the application is in good faith  
13 and in other respects proper and reasonable, he shall grant to  
14 [~~such~~] the applicant a license. [~~therefor; provided that the~~  
15 ~~maximum area that may be included within any park shall not~~  
16 ~~exceed three thousand two hundred acres and that every park~~  
17 ~~shall be enclosed by a game proof fence which shall conform to~~  
18 ~~specifications required by the state game commission.~~]"

19 Section 6. Section 17-4-13 NMSA 1978 (being Laws 1912,  
20 Chapter 85, Section 64, as amended) is amended to read:

21 "17-4-13. LICENSE-- [~~SEC. 63~~] FORM [0F].-- [~~SEC. 64.~~] Such  
22 license shall be substantially in the following form:

23 GAME AND FISH

24 STATE OF NEW MEXICO

25 DEPARTMENT OF GAME AND FISH

LICENSED ~~[PARKS AND]~~ LAKES AND BODIES OF WATER

No. \_\_\_\_\_ Class A. Santa Fe \_\_\_\_\_ [19] 20 \_\_

This certifies that \_\_\_\_\_  
proprietor of a (public or private) (~~[park or]~~ lake or  
body of water) called \_\_\_\_\_ and situated  
on \_\_\_\_\_ Sec \_\_\_\_\_ Twp  
\_\_\_\_\_ Range \_\_\_\_\_ in  
\_\_\_\_\_ county, New Mexico, is hereby  
authorized to keep and propagate therein and dispose  
of as provided by law the following (game [~~quadrupeds,~~  
~~birds or]~~ fish), viz: \_\_\_\_\_ together  
with such additions thereto (with the natural increase  
of all) as may be hereafter lawfully acquired. This  
license expires \_\_\_\_\_ years after date.  
\_\_\_\_\_ ~~[Warden]~~ Director. "

Section 7. Section 17-4-15 NMSA 1978 (being Laws 1912,  
Chapter 85, Section 66, as amended) is amended to read:

"17-4-15. PRIVATE LAKES-- CONSENT REQUIRED FOR USE--  
PERMIT. -- Except as [~~in this division~~] otherwise provided in  
Sections 17-4-8 through 17-4-28 NMSA 1978, all game [~~and~~] fish,  
with the natural increase thereof, held or confined in [~~any~~] a  
private [~~preserve, park or~~] lake or body of water licensed  
under the provisions of [~~this act~~] those sections shall, during  
the existence of the license or any renewal thereof, be deemed  
the property of the licensee [~~of the same~~] to the extent that

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1 he may lawfully retain, [~~pursue~~] capture, [~~kill~~] use, sell or  
2 dispose of the game [~~or~~] fish [~~therein~~] in any quantity, in any  
3 manner and at any time of the year, and the [~~pursuit~~] capture,  
4 wounding or killing of any game [~~or~~] fish in any public or  
5 private and licensed [~~preserve, park or~~] lake [~~public or~~  
6 ~~private~~] or body of water without the consent of the proprietor  
7 shall be unlawful; provided that the aggregate number of game  
8 [~~animals or~~] fish in [~~any~~] a licensed private preserve, park or  
9 lake [~~which~~] that contained game [~~or~~] fish belonging to the  
10 state at the time or date of the issuing of such license shall  
11 not be lessened by the killing, use, sale or disposition  
12 thereof, it being the purpose of this [~~provision~~] section to  
13 restrict such killing, use, sale and disposition to a number  
14 not exceeding in the aggregate the natural increase. If by  
15 reason of controlling necessity or for the purpose of stocking  
16 or replenishing some other [~~park or~~] lake or body of water any  
17 proprietor of a licensed [~~preserve, park or~~] lake or body of  
18 water may desire to lessen the aggregate number [~~above~~]  
19 provided for in this section, the [~~State Game and Fish Warden~~]  
20 director of the department of game and fish may [~~on being~~  
21 ~~satisfied of the propriety thereof~~] grant a permit [~~therefor~~]  
22 for that purpose."

23 Section 8. Section 17-4-16 NMSA 1978 (being Laws 1912,  
24 Chapter 85, Section 67, as amended) is amended to read:

25 "17-4-16. GAME FISH [~~PARKS~~] FROM LAKES - - SALE [~~OF OWNER~~ - -

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1 ~~DUTY~~ -- INVOICE -- FORM [~~WARDEN~~]. -- [~~SEC. 67.~~] When the proprietor  
2 of [~~any~~] a licensed [~~park or~~] lake [~~of Class A~~] or body of  
3 water shall sell or dispose of any [~~game or~~] game fish as  
4 [~~herein~~] provided [~~he~~] in Sections 17-4-8 through 17-4-28 NMSA  
5 1978, the proprietor shall at the same time deliver to the  
6 purchaser or donee or attach thereto an invoice signed by  
7 [~~such~~] the proprietor or [~~his~~] agent of the proprietor, stating  
8 the number of the license and name of [~~such park or~~] lake or  
9 body of water, the date of disposition, the kind and as near as  
10 practicable the number and weight of [~~such~~] the game [~~or~~] fish  
11 and the name and address of the purchaser, consignee or donee.  
12 [~~Such~~] The invoice shall authorize transportation within this  
13 state, possession and use for thirty days after its date and  
14 shall be substantially in the following form:

STATE OF NEW MEXICO

DEPARTMENT OF GAME AND FISH

PRIVATE [~~PARKS AND~~] LAKES AND BODIES OF WATER -- INVOICE

Name of [~~park or~~] lake or body of water \_\_\_\_\_ [~~Class~~  
19 A] No. of license \_\_\_\_\_ Date \_\_\_\_\_  
20 [~~19~~] 20 \_\_\_ Kind and number of game [~~and~~]  
21 fish \_\_\_\_\_ Weight of same \_\_\_\_\_ lbs.  
22 Name of consignee \_\_\_\_\_  
23 Address of consignee \_\_\_\_\_

24 This authorizes transportation with this state,  
25 possession and sale for thirty days after date if attached

1 to article.

2 \_\_\_\_\_ Proprietor\_\_\_\_\_

3 By \_\_\_\_\_ Agent.

4 [~~Such~~] The proprietor or his agent shall at the same  
5 time mail, postpaid, a duplicate of [~~such~~] the invoice to  
6 the [~~Warden~~] director of the department of game and fish at  
7 Santa Fe. "

8 Section 9. Section 17-4-17 NMSA 1978 (being Laws 1912,  
9 Chapter 85, Section 68, as amended) is amended to read:

10 "17-4-17. GAME FISH-- [~~PARKS, LAKES~~] SHIPMENT [~~OF~~]--  
11 ATTACH INVOICE.-- [~~SEC. 68.~~] When any [~~such~~] game [~~or~~] fish  
12 for which an invoice is required is to be shipped by rail,  
13 express or other carrier, public or private, the invoice  
14 shall be securely attached thereto or to the package  
15 containing the [~~same~~] game fish, in plain sight, and the  
16 [~~same~~] game fish may then be lawfully carried and delivered  
17 within this state to the consignee named in [~~such~~] the  
18 invoice."

19 Section 10. Section 17-4-18 NMSA 1978 (being Laws 1912,  
20 Chapter 85, Section 69, as amended) is amended to read:

21 "17-4-18. GAME FISH-- [~~PARKS, LAKES~~] SALE BY CONSIGNEE--  
22 [~~HOTELS~~] INVOICE ATTACHED.-- [~~SEC. 69.~~] If [~~such game or~~] a  
23 game fish for which an invoice is required is held, exposed  
24 or offered for sale or sold by the consignee or kept in any  
25 storage, hotel, restaurant, cafe or boardinghouse, [~~such~~]

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1 the invoice shall be kept attached thereto as [aforesaid]  
2 provided in Section 17-4-17 NMSA 1978 until the [~~same shall~~  
3 ~~have been~~] game fish is prepared for consumption. "

4 Section 11. Section 17-4-19 NMSA 1978 (being Laws 1912,  
5 Chapter 85, Section 70, as amended) is amended to read:

6 "17-4-19. GAME FISH-- [~~PARKS, LAKES~~] SALE OF-- DELIVER  
7 [~~PURCHASER~~] COPY OF INVOICE TO PURCHASER-- ATTACH. -- [~~SEC.~~  
8 ~~70.~~] In case of a sale or disposition of [~~such game or~~] a  
9 game fish [~~or any part thereof~~] for which an invoice is  
10 required, the vendor shall [~~at the same time~~] make a copy of  
11 [~~such~~] the invoice and endorse [~~thereon~~] on it the date of  
12 sale, the number and kind of game [~~or~~] fish [~~so~~] disposed of  
13 and the name of the purchaser [~~and~~]. The vendor shall sign  
14 and deliver the [~~same~~] copy to the purchaser or donee, who  
15 shall keep it attached as [~~aforesaid~~] provided in Section  
16 17-4-17 NMSA 1978 until the game [~~or~~] fish is prepared for  
17 consumption [~~and~~]. The [~~same~~] invoice copy shall have the  
18 same force and effect as the original invoice. "

19 Section 12. Section 17-4-20 NMSA 1978 (being Laws 1912,  
20 Chapter 85, Section 71, as amended) is amended to read:

21 "17-4-20. [~~GAME-- FISH-- PARKS, LAKES~~] WILLFUL ERROR  
22 RENDERS INVOICE VOID-- POSSESSION UNLAWFUL. -- [~~SEC. 71. Any~~]  
23 A willful misstatement in or [any] an omission of a  
24 substantial requirement from [any] an invoice or copy  
25 [~~thereof~~] of an invoice shall render the [~~same~~] invoice or

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1 copy void and be deemed a violation of [~~this chapter~~]  
2 Sections 17-4-8 through 17-4-28 NMSA 1978, and the  
3 possession of [~~any game or~~] game fish without [~~such~~] the  
4 invoice or [a] copy [thereof] attached [thereto] to the game  
5 fish when [~~so as above~~] required [~~shall be~~] in those  
6 sections is unlawful. "

7 Section 13. Section 17-4-21 NMSA 1978 (being Laws 1912,  
8 Chapter 85, Section 72, as amended) is amended to read:

9 "17-4-21. [~~GAME--FISH PARKS~~] LAKES-- PROPRIETOR REPORT  
10 TO [~~WARDEN~~] DIRECTOR. -- [~~SEC. 72.~~] The proprietor of every  
11 private [~~park and~~] lake or body of water licensed under [~~the~~  
12 ~~preceding~~] Sections 17-4-8 through 17-4-28 NMSA 1978 shall,  
13 whenever required by the [~~Warden~~] director of the department  
14 of game and fish, make and send to the [~~Warden~~] director at  
15 Santa Fe a report showing as near as practicable [~~the kind,~~  
16 ~~number, age and sex of the game and~~] the kind and number or  
17 weight of the game fish added and disposed of during the  
18 year preceding and on hand at the date of the report. "

19 Section 14. Section 17-4-23 NMSA 1978 (being Laws 1912,  
20 Chapter 85, Section 74, as amended) is amended to read:

21 "17-4-23. [~~GAME--FISH PARKS~~] LAKES AND OTHER BODIES OF  
22 WATER-- GRANTEE, LESSEE DEEMED PROPRIETOR. -- [~~SEC. 74.~~] When  
23 the owner of a private [~~park or~~] lake or other body of water  
24 has granted or leased to another the right to keep and  
25 propagate [~~game or~~] fish therein, the grantee or lessee

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1 shall be deemed the proprietor and entitled to the license. "

2 Section 15. Section 17-4-26 NMSA 1978 (being Laws 1912,  
3 Chapter 85, Section 77, as amended) is amended to read:

4 "17-4-26. POSTING AGAINST TRESPASS. -- There shall be  
5 kept posted [~~conspicuously at every gate where a road or~~  
6 ~~trail enters or crosses each licensed park or preserve and~~]  
7 at conspicuous places along the border of each licensed lake  
8 plain notices not less than one foot square stating that the  
9 [~~same~~] lake is private property and [~~warning persons against~~  
10 ~~trespassing thereon~~] that trespassing upon the property is  
11 prohibited. "

12 Section 16. Section 17-4-27 NMSA 1978 (being Laws 1912,  
13 Chapter 85, Section 78, as amended) is amended to read:

14 "17-4-27. [~~GAME--FISH PARKS~~] LAKES--TRANSFER OF  
15 OWNERSHIP--LICENSE. -- [~~SEC. 78.~~] In case of a transfer of  
16 proprietorship or interest in any [~~park~~] lake or [~~preserve~~]  
17 body of water, the transferee shall within thirty days  
18 thereafter procure from the [~~Warden~~] director of the  
19 department of game and fish a transfer of the license,  
20 endorsed on the back [~~thereof~~]. "

21 Section 17. Section 17-4-28 NMSA 1978 (being Laws 1912,  
22 Chapter 85, Section 79, as amended) is amended to read:

23 "17-4-28. [~~PARKS~~] LAKES [~~AND PRESERVES~~]--LICENSE--  
24 FEES. --

25 A. Licenses for [~~private parks~~] lakes [~~and~~

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1 ~~preserves]~~ may be for one year, and any license shall be  
2 renewed annually at the request of the licensee.

3 B. The director of the department of game and fish  
4 shall charge and collect just and reasonable fees for the  
5 following permits under Sections 17-4-8 through 17-4-28 NMSA  
6 1978, as determined by ~~[regulation]~~ rule of the state game  
7 commission:

8 (1) permit to capture or exchange;

9 [~~(2)~~] ~~quadruped park license;~~

10 [~~(3)~~] ~~each renewal of each quadruped park~~  
11 ~~license;~~

12 [~~(4)~~] (2) one lake license;

13 [~~(5)~~] (3) each renewal of one lake license;

14 [~~(6)~~] (4) each additional lake license;

15 [~~(7)~~] (5) each renewal of each additional lake  
16 license; and

17 [~~(8)~~] (6) each certificate, permit or license  
18 not provided for in this section. "